

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

)	
In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	
)	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	
)	WC Docket No. 03-109
Universal Service Reform – Mobility Fund)	
)	WT Docket No. 10-208
)	

**NORTHERN VALLEY COMMUNICATION, LLC’S
RESPONSE TO PETITION FOR RECONSIDERATION AND CLARIFICATION OF
THE UNITED STATES TELECOM ASSOCIATION**

Northern Valley Communications, LLC (“Northern Valley”), by its attorneys and pursuant to Section 1.429(f), hereby respectfully opposes portions of the Petition for Reconsideration and Clarification (“Petition”) filed by the United States Telecom Association (“USTA”) on December 29, 2011 seeking clarification or reconsideration of the Commission’s

*Order*¹ in the above-captioned proceeding. As set forth more fully below, portions of USTA's Petition should be denied on both procedural and substantive grounds.²

I. BACKGROUND

On October 27, 2011, the Commission adopted the *Order*, which comprehensively reforms the intercarrier compensation system to promote the availability of affordable broadband services nationwide and to update and modernize the nation's telecommunications systems. Over time, under the Commission's new regime, intercarrier compensation will gradually phase down to a "bill-and-keep" system. In the interim, the Commission took steps to ensure that rates for calls terminating to high volume end users, such as free conferencing and chat services, remain just and reasonable.

The Commission's order recognizes the numerous fights throughout the industry regarding the application of tariffed access charges to calls terminating to the high volume services, the IXC's repeated refusal to pay tariffed access charges, and seeks to address these disputes through the adoption of clear and explicit rules. As the Commission explained in its Notice of Proposed Rulemaking, it sought "to strike the appropriate balance of addressing the policy concerns . . . without imposing unnecessary burdens on LECs"³ The Commission,

¹ See *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011) (the "*Order*").

² Northern Valley takes no position on USTA's requests for clarification or reconsideration not specifically addressed in this opposition.

³ See *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal*

through its new rules, accomplishes such a balance: it rejects repeated invitations to deny Local Exchange Carriers (“LECs”) the ability to share revenues with high-volume customers, or to strip these LECs of the benefits of the tariffed access charge regime, while reducing and capping the rates that can be charged in these circumstances. While Northern Valley urged the Commission to use a different benchmarking mechanism for establishing the applicable rates, it nevertheless recognizes that the Commission’s balance is fully within its discretion and reflects a reasonable resolution of the issues.

The Commission’s new rules result from a thoughtful, if not painstaking, process that ensured all interested parties had ample opportunity to provide their input. Indeed, the Commission first considered amending its rules in response to concerns about rising access costs as a result of conference calling services in 2007.⁴ Throughout the intervening four years, the Commission received input from a number of interested parties, and through its further notice of proposed rulemaking, sought and obtained yet further input throughout the year on the appropriate course of action.⁵

Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554, ¶ 658 (2011) (“*ICC/USF NPRM*”).

⁴ See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd. 17989 (2007).

⁵ See *ICC/USF NPRM*.

II. USTA’S REQUEST FOR RECONSIDERATION OF THE RATE APPLICABLE TO CLECS THAT HAVE ACCESS REVENUE SHARING AGREEMENTS IS BASELESS IN LIGHT OF ITS PRIOR ADVOCACY AND, IN ANY EVENT, IS PROCEDURALLY IMPROPER

As an initial matter, USTA’s request that the Commission reconsider its conclusions about the rate that should apply when a LEC meets the access stimulation definition must be rejected because of USTA’s prior advocacy. Specifically, USTA has stated previously:

USTelecom agrees with the Commission’s proposal to have CLECs that meet the trigger to benchmark their rates to the rate of the Bell Operating Company (BOC) in the state in which the competitive LEC operates, or the independent incumbent LEC with the largest number of access lines if there is no BOC in the state.⁶

While the Commission ultimately changed its proposal to require benchmarking to the price cap LEC with the lowest rates in the state, rather than the BOC or ILEC with the largest number of access lines, the resulting rates are the same in many cases or lower. In any event, the proposal USTA endorsed would always have yielded rates higher than the \$0.0007 it now suggests should be the maximum applicable rate.

USTA’s Petition fails to acknowledge that its new advocacy is directly at odds with its earlier advocacy in this docket and, as such, it does not even attempt to explain why the Commission’s new rules warrant reconsideration. In essence, USTA appears to have had a belated change of heart, but that does not and cannot justify reconsideration. USTA got exactly what it asked for in this proceeding; no reconsideration is warranted.

⁶ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Comments of the United States Telecom Association, at 11 (April 1, 2011).

Even if USTA could explain why its earlier advocacy does not estop it from seeking reconsideration, USTA's request for reconsideration would nevertheless fail because it is procedurally defective. USTA repeats an argument that the Commission expressly addressed and rejected in the *Order*. USTA now urges the Commission to adopt a rate of \$0.0007 per minute for LECs engaged in access stimulation.⁷ As USTA notes, Sprint and AT&T previously urged the Commission to adopt this very proposal.⁸ The Commission expressly rejected that request in the *Order*.⁹ It is "settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."¹⁰ Therefore, USTA's request to modify the Commission's choice of rates must be summarily dismissed.

III. USTA'S REQUEST FOR CLARIFICATION REGARDING LEC MILEAGE CHARGES DOES NOT WARRANT COMMISSION ACTION

USTA also requests that the Commission clarify various aspects of its *Order*. While Northern Valley does take a position may of those requests, with regard to its request for clarification regarding mileage-sensitive charges, it notes that USTA has failed to demonstrate

⁷ USTA Petition at 36.

⁸ *Id.*; See also *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Comments of Sprint Nextel Corporation, at 8, 12-19 (April 1, 2011).

⁹ *Order*, at ¶ 692.

¹⁰ *S&L Teen Hosp. Shuttle*, Order on Reconsideration, 17 FCC Rcd. 7899, 7900, ¶ 3 (2002) (citations omitted).

that any clarification is warranted.¹¹ For this reason, the Commission should also deny this request for clarification.

Specifically, USTA requests that the Commission make clear that a carrier that has a revenue sharing agreement may be subject to the Commission's complaint procedures if it acts to "increase artificially mileage-sensitive transport charges."¹² No such clarification is warranted because the Commission has already made clear that it will address issues regarding modifications to the transport rate elements when it completes its further rulemaking.¹³ Thus, it would be premature to affirmatively address this issue as part of a petition for clarification. Moreover, USTA does not explain why clarification is necessary to inform carriers of their ability to bring complaints to the Commission. Nothing in the *Order* purports to modify the existing procedures for bringing complaints when a carrier believes, in good faith, that there has been a violation of the Act. Rather, USTA's requested clarification seems to be an effort to have the Commission opine about how a hypothetical situation may violate the Act, rather than waiting to address the issue in the context of its pending rulemaking or on the basis of specific facts in a formal complaint proceeding. Therefore, this appears to be more of an effort to get the Commission to adopt additional rules, rather than merely clarifying the rules that are now in place. In short, USTA fails to demonstrate that there is actual confusion that warrants clarification by the Commission.

¹¹ See, e.g., *In the Matter of Jurisdiction Separations and Referral to the Federal-State Joint Board National Telecommunications Cooperative Assoc.*, 26 FCC Rcd. 9498, 9500, ¶ 7 (2011) (because the rules adopted by the Commission were clear and the party seeking clarification failed to demonstrate why the clarification was necessary, the request was denied).

¹² USTA Petition at 36.

¹³ *Order*, ¶ 820.

IV. CONCLUSION

As the Commission stated, it has “balanced the need for [] new rules . . . with the costs that may be imposed on LECs . . .” and have concluded that the rules it has adopted are appropriate.¹⁴ USTA’s Petition fails to meet the standards to justify reconsideration of those rules and thus must be rejected. Further, USTA has not demonstrated that its proposed clarifications are necessary or appropriate and, as such, Northern Valley encourages the Commission to reject them as well.

Dated: January 26, 2012

Respectfully submitted,



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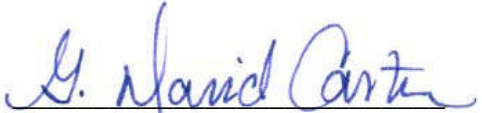
*Counsel for Northern Valley
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¹⁴ Order, ¶ 701.

CERTIFICATE OF SERVICE

I, G. David Carter, hereby certify that on this the 26th day of January, 2012, I caused a copy of the foregoing NORTHERN VALLEY COMMUNICATION, LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE UNITED STATES TELECOM ASSOCIATION to be filed electronically in the Commission's Electronic Comment Filing System and a copy to be delivered via courier to:

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G. David Carter